



PCT

Rec'd PCT/PTO 07 FEB 2005

INTERNATIONAL PRELIMINARY EXAMINATION REPORT
(PCT Article 36 and Rule 70)

Applicant's or agent's file reference NO 7320WO/PCT		FOR FURTHER ACTION	See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)																								
International application No. PCT/EP 03/08356	International filing date (day/month/year) 29.07.2003	Priority date (day/month/year) 07.08.2002																									
International Patent Classification (IPC) or both national classification and IPC A23L1/64																											
Applicant NESTEC S.A. et al																											
<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p><input type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of sheets.</p>																											
<p>3. This report contains indications relating to the following items:</p> <table><tr><td>I</td><td><input checked="" type="checkbox"/></td><td>Basis of the opinion</td></tr><tr><td>II</td><td><input type="checkbox"/></td><td>Priority</td></tr><tr><td>III</td><td><input checked="" type="checkbox"/></td><td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td></tr><tr><td>IV</td><td><input type="checkbox"/></td><td>Lack of unity of invention</td></tr><tr><td>V</td><td><input checked="" type="checkbox"/></td><td>Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td></tr><tr><td>VI</td><td><input type="checkbox"/></td><td>Certain documents cited</td></tr><tr><td>VII</td><td><input type="checkbox"/></td><td>Certain defects in the international application</td></tr><tr><td>VIII</td><td><input type="checkbox"/></td><td>Certain observations on the international application</td></tr></table>				I	<input checked="" type="checkbox"/>	Basis of the opinion	II	<input type="checkbox"/>	Priority	III	<input checked="" type="checkbox"/>	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	IV	<input type="checkbox"/>	Lack of unity of invention	V	<input checked="" type="checkbox"/>	Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	VI	<input type="checkbox"/>	Certain documents cited	VII	<input type="checkbox"/>	Certain defects in the international application	VIII	<input type="checkbox"/>	Certain observations on the international application
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Date of submission of the demand 01.03.2004		Date of completion of this report 11.11.2004																									
Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016		Authorized Officer Vuillamy, V Telephone No. +31 70 340-3504 																									

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**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. PCT/EP 03/08356

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-12 as originally filed

Claims, Numbers

1-15 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

**INTERNATIONAL PRELIMINARY
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International application No. PCT/EP 03/08356

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
☒ claims Nos. 14, 15 with respect to Industrial Applicability

because:

- ☒ the said international application, or the said claims Nos. 14, 15 relate to the following subject matter which does not require an international preliminary examination (specify):

see separate sheet

- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
☐ no international search report has been established for the said claims Nos.

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

- ☐ the written form has not been furnished or does not comply with the Standard.
☐ the computer readable form has not been furnished or does not comply with the Standard.

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-15
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-15
Industrial applicability (IA)	Yes: Claims	1-13
	No: Claims	

2. Citations and explanations

see separate sheet

III/ Non-establishment of opinion (Continuation)

For the assessment of the present claims 14 and 15 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.

V/ Reasoned statement (Continuation)

Reference is made to the following documents:

D1: Int. Food Ingr., 1994	D2: WO-A-0184961
D3: US-A1-2002102330	D4: JP-A-2000217512
D5: JP-A-08275728	D6: JP-A-59095860
D7: EP-A-0296117	D8: US-B1-6235331
D9: WO-A-0151088	D10: US-A-4451488

V.1/ The subject-matter of claims 1-15 is new in the sense of Article 33(2) PCT: the prior art does not disclose the combination of encapsulated DHA or EPA with citrus flavour in cereal-based food products of Aw 0.2-0.4.

V.2/ The present application does not satisfy the criterion set forth in Article 33(3) PCT because the subject-matter of claims 1-15 does not involve an inventive step (Rule 65(1), (2) PCT).

V2.1/ Document D1 is considered to represent the most relevant state of the art and discloses (cf. pages 43, 44 and fig.4) the use of encapsulated DHA in cereal products (eg. low moisture products such as muesli, flakes, presumably having a low water activity) to avoid fishy taste and smell. A cereal bar containing encapsulated fish oil (rich in DHA) is also described in document D2 (cf. ex.5).

The subject-matter of claims 1, 10, 14 or 15 differs by the additional citrus flavor.

The problem to be solved by the present invention may therefore be regarded as providing an improved DHA-containing cereal product, with a further reduced fish taste and smell. The proposed solution is the addition of citrus flavors as taste/smell masking agents.

This solution cannot however be considered as involving an inventive step for the following reason: the use of citrus flavors for masking fish taste or smell is known from documents D4-D9. The skilled person would therefore regard it as a normal design to include this feature in order to solve the problem posed. The application fails to demonstrate any surprising effect (like a synergistic effect) provided by using both encapsulation and citrus flavor.

V2.2/ Regarding the process of claim 12, your attention is also drawn to documents D3 or D10:

- document D3 discloses (cf. par.61, 71, 72, 86, 93; example; claim 37) a cereal bar containing DHA and orange flavor, having a moisture content as low as zero, and prepared at temperatures below 80°C. D3 further discloses packaging such a cereal bar under modified atmosphere.
- document D10 discloses (cf. claim 1; example I) a cereal bar with a water activity of 0.2-0.55 prepared at temperatures below 80°C.

The subject-matter of claim 12 therefore appears as an obvious and consequently non-inventive combination of features, by merely associating known features and not producing any non-obvious effect.

V.2.3/ It is not yet apparent which feature of dependent claims 2-9, 11 or 13 could, in combination with the features of any claim to which they refer, meet the requirements of the PCT with respect to inventive step. Indeed, having regard to the claimed product or process, and the prior art known from D1-D10, it is considered that the person skilled in the art would regard the product and process of the present invention as an obvious alternative to those known.